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Attorney Docket No. 05725.1033
Customer Number 22,852

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)

Michel PHILIPPE et al.)

Application No.: 10/086,451)

Group Art Unit: 1616

Filed: March 4, 2002)

Examiner: G. Konata

For: ANTI-WRINKLE COSMETIC OR)
PHARMACEUTICAL)
COMPOSITIONS COMPRISING)
POLYMERS AND SALTS)
THEREOF)

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

RESPONSE TO RESTRICTION REQUIREMENT

In the Office Action mailed June 25, 2003, the Examiner has required restriction between the following groups of claims:

- Group I** Claims 1-24 and 27, drawn to a composition, classified in class 424, subclass 78.02;
- Group II** Claim 25, drawn to a method of using, classified in class 424, subclass 78.03; and
- Group III** Claim 26 a method of making, classified in class 424, subclass 78.03.

The restriction requirement, as set forth above and on pages 2-4 of the Office Action, is respectfully traversed. However, to be fully responsive to the restriction requirement, Applicants elect, with traverse, the subject matter of Group II, claim 25.

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To be fully responsive to the election of species requirement, Applicants also elect, with traverse:

- the compound of Example 1 (compound of formula (I), where $R_1 = CH_3$, $X = O$, $R_2 = -CH_2-C_6H_4-pOH$, $R_3 = H$ and $n = 100$);
- a cosmetically acceptable medium as the physiologically acceptable medium (claim 13);
- a water-in-oil emulsion as the form of claim 20; and
- products for protecting and caring for the skin of the face, the neck, the hands and the body, as the product of claim 21, form (i).

The Examiner supports the restriction requirement for the following reasons. The inventions of Groups I (composition) and II (method of using) are allegedly distinct because "the product as claimed can be used in a materially [different] process such as an anti-sun composition or an artificial tanning composition. *Office Action* at p. 2. The inventions of Groups I (composition) and III (method of making) are allegedly distinct because "the process as claimed can be used to make a materially different product such as sunscreen composition." *Id.* at pp. 2-3. Finally, the Examiner alleges that the inventions of Groups II and III allegedly unrelated because "the different inventions [of] group II is directed towards a method of use and group III is directed towards a method of [making]. *Id.* at p. 3.

Applicants refer the Examiner to M.P.E.P. § 803, which sets forth the criteria and guidelines for Examiners to follow in making proper requirements for restriction. The M.P.E.P. instructs Examiners as follows:

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If the search and examination of an entire application can be made without serious burden, the Office must examine it on the merits, even though it includes claims to distinct or independent inventions.

M.P.E.P. § 803 (emphasis added).

Here, the Examiner has not shown that examining the above groups together would constitute a serious burden. According to the present Office Action, the inventions of Groups I, II, and III are all classified in the identical class 424. Moreover, the inventions of Groups II and III share the same subclass 78.03. Accordingly, a search for all these groups of claims should substantially overlap. Thus, for at least this reason, Applicants respectfully submit that the restriction requirement is in error and request that the requirement be withdrawn.

Additionally, if the Examiner chooses to maintain the election of species requirement, Applicants expect that the Examiner, if the elected species is found allowable, to continue to examine the full scope of the claims to the extent necessary to determine the patentability of these pending claims, i.e., extending the search to a reasonable number of the non-elected species, as is the duty according to M.P.E.P. § 803.02 and 35 U.S.C. § 121.

If the Examiner believes a telephone conference would be useful in resolving any outstanding issues, he is invited to call the undersigned at (202) 408-4162.

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Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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By: 

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DATE: August 25, 2003

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